

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

## Extending Wireless Telecommunications Services To Tribal Lands

WT Docket No. ~~98~~-205

99-266

## COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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|                             |   |                      |
|-----------------------------|---|----------------------|
| Extending Wireless          | ) |                      |
| Telecommunications Services | ) | WT Docket No. 96-205 |
| To Tribal Lands             | ) |                      |

TO: The Commission

**COMMENTS OF THE PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> respectfully submits these comments in connection with the *Notice of Proposed Rulemaking* ("*NPRM*") issued by the Commission in the above-captioned proceeding.<sup>2</sup>

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<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Alliance, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As an FCC appointed frequency coordinator for the Industrial/Business Pool frequencies below 512 MHz, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

<sup>2</sup> *Extending Wireless Telecommunications Services to Tribal Lands*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-205, (rel. August 18, 1999) ("*NPRM*").

PCIA shares the Commission's concern about the widespread lack of access to telephony service of Americans who live in remote areas such as tribal lands and applauds the Commission's efforts to identify deregulatory incentives to address this issue. Bringing telephony service to remote areas is invariably an immensely costly undertaking. This is further exacerbated by the fact that many currently unserved populations may not have the means to pay for the equivalent of basic telephone service, to say nothing of having the wherewithal to pay anything approaching the true cost of providing advanced broadband services.

PCIA generally supports these efforts to promote the availability of wireless telephony alternatives. The Commission has properly focussed its attention on one of the least served populations in this country. The Commission should, therefore, limit these initial technical and operational incentives to use on tribal lands. This focus will ensure that carriers wishing to take advantage of technical and operational flexibility will use it to serve Indian tribes. In addition, limiting these proposals to tribal lands will permit the Commission to gain operational experience with these proposals in a relatively circumscribed area before considering them more broadly.

However, PCIA believes that even if all of the measures proposed in this NPRM are adopted, they would not provide the necessary incentive for service providers to undertake the risks and challenges of providing wireless telephony services to inherently difficult market areas. In fact, wireless providers will not likely develop viable economic models for introducing telephony services to many unserved regions on tribal lands until a defined mechanism is in place for them to receive Universal Service support, i.e. to become "eligible telecommunications carriers" (ETCs) pursuant to section 214(e) of the

Telecommunications Act. The Commission is correct to initiate a proceeding to establish its authority to administer Universal Service on tribal lands.<sup>3</sup> The Commission should also continue its efforts to ensure that wireless carriers can qualify for ETC status without unwarranted and burdensome standards beyond those established by Congress in Section 214(e) of the Telecommunications Act.<sup>4</sup>

**I. ANY INITIATIVES FOR PROVIDING INCENTIVES TO PROVIDE TELEPHONY TO UNSERVED AREAS SHOULD BE LIMITED TO TRIBAL LANDS**

The Commission should first implement incentives to serve tribal lands and then assess their impact before proposing to extend the same or similar measures to unserved areas not located on tribal lands. In evaluating the value or effectiveness of such initiatives, PCIA concurs with the Commission that the relaxation must not disrupt, interfere with, or compromise the operation of any FCC licensed services.

If the principles detailed in this NPRM were extended to unserved areas other than tribal lands, the FCC would need to define, with detailed specificity, what

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<sup>3</sup> *Further Notice of Proposed Rulemaking on Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*. CC Docket Number: 96-45 released on September 3, 1999.

<sup>4</sup> The Commission recently ruled that all carriers, including commercial mobile radio service (CMRS) carriers, that provide the supported services, regardless of the technology used, are eligible for ETC status under section 214(e)(1). "We reiterate that the plain language of section 214(e)(1) prohibits the Commission or the states from adopting additional eligibility criteria beyond those enumerated in section 214(e)(1). We also reaffirm that under section 214(e), a state commission must designate a common carrier, including carriers that use wireless technologies, as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1)." *In re Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, para. 72 (May 28, 1999). The Fifth Circuit Court of Appeals recently confirmed that state commissions may not impose onerous eligibility requirements beyond those established by Section 214. See Texas Office of Public Utility Counsel v. Federal Communications Commission, \_\_\_\_ F.3d. \_\_\_\_ (5th cir.)(No. 97-60421) at note 31.

constitutes an “unserved” area. Because of the major implications for licensees, customers, and state and federal regulators as to how the FCC would define an “unserved” area, this proposal would require modifications to other FCC rules defining operations and build-out requirements. The Commission would also need to more closely examine the potential benefits and potential disadvantages of interjecting regulatory and technical flexibility on licensees and their customers under various sharing conditions.

**A. Eliminating Height and Power Requirements May be Modestly Useful**

PCIA believes that eliminating height and power requirements in unserved areas on tribal lands may help PCS, LMDS, and other wireless providers develop and operate their infrastructure more efficiently. As the FCC noted, this type of measure should typically enable a wireless carrier, such as a PCS provider, to serve a geographic area with fewer towers and base stations than would otherwise be required.<sup>5</sup>

Any relaxation of height and power limits for licensees operating within the boundaries of tribal lands and other remote areas could create interference or other problems for other licensees operating in the same or adjacent geographic areas. Licensees who are taking advantage of any rule relaxation must be responsible for protecting the operations of any other licensee lawfully operating within its allotted engineering parameters from interference or disruption.

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<sup>5</sup> It is not clear, however, whether power and height flexibility will do much to expand the reach of fixed broadband operations, such as LMDS, in their hub and subscriber modes. There may be a benefit, however, in increasing power limitations in the back haul microwave hops that could be used to link LMDS to the public switched telephone network or other high-capacity networks.

PCIA also suggests that the FCC consider height/power limitations separately. As an example, a base station operating at an ERP higher than the permitted power might not cause interference to adjacent systems. However, if the antenna height of the same base station were raised, even with corresponding adjustments in azimuth, interference to surrounding and adjacent systems might be caused. In other situations, the converse might be true, where raising power might create interference while raising the antenna would not.

**B. Liberalization of the Buildout Requirements, if Combined with other Incentives, Could be a Modest Inducement for Newly Licensed Carriers to Concentrate Buildout Efforts in Tribal Lands**

PCIA believes that liberalizing the build-out requirements, such as giving greater weight to “pops” covered on tribal lands, could offer an incentive for a newly-licensed carrier to place a higher priority on providing coverage to tribal lands. If the Commission should choose to reward these expanded coverage efforts, it should weigh these efforts in terms of unserved populations passed by a carrier, not new subscribers.

For fixed wireless services such as LMDS and 39 GHz, which are not subject to a population or geographic coverage requirement, the Commission still proposes to count service to a tribal land as meeting the licensees’ “substantial service” obligation. PCIA supports this proposal if the Commission intends it to mean that a fixed licensee would meet its obligation for “substantial service” for its entire territory by building out in a tribal land.

**C. Any Provisions That Would Allow Service Providers to Extend Their Service Areas Beyond their License Boundaries Must Also Address the Adjacent Area Licensee's Rights**

The FCC is correct in noting that FCC geographic license areas often do not correspond to the boundaries of tribal lands and that this can make it much more difficult for service providers to serve tribal lands. In some cases, a carrier serving a portion of a tribal land may not be licensed in other portions of that area. Additionally, the adjacently-licensed carrier who could serve the tribal land may make a business decision not to provide service to a particular out-of-the-way corner. This demarcation between the license areas may exacerbate the complexity and expense of initiating service and substantially limit any potential for either carrier to gain additional customers.

At the same time, PCIA agrees with the FCC that allowing an adjacent area licensee to extend coverage into another license area, where the license for exclusive use of a frequency range was acquired at auction, raises difficult policy issues. PCIA suggests below a possible means of resolving this problem. This proposal is limited to facilitating service to tribal lands, but could later be extended to other unserved areas

1. Requirement for notification: An adjacent licensee would be required to notify the holder of any exclusive license of its intention to introduce service to an area located within the current holder's geographic license area. The notified licensee would then have the option of providing service to the area in question within a reasonable time frame. That window of time should be specified by the Commission.
2. Transfer of spectrum could be handled as a partitioning transaction: If the original licensee does not wish to serve the area, it would transfer its spectrum use

rights to the requesting licensee. This would be handled as a partitioning transaction. Here, the original licensee would be selling its rights to use the spectrum in a discrete area to another.

3. An upper monetary limit for the transfer of spectrum could expedite negotiations:

Many remote, sparsely populated unserved areas are inherently costly for carriers to serve. Placing an upper limit on what the original spectrum holder would be entitled to receive for partitioned spectrum may limit protracted negotiations. Without a mechanism to expedite a transaction, an uncooperative licensee who controls the spectrum could effectively discourage or prevent an adjacent area licensee from extending service into an unserved area. Remuneration from the acquiring licensee could be a function of (a) the estimated service population of the area in question and (b) what the original holder paid the FCC for the spectrum.

4. Transfer could also involve disaggregation: The original licensee may want to retain the option of serving the area in the future by choosing to sell only a portion of its spectrum use rights. In sparsely populated areas, carriers would not likely need large amounts of spectrum to provide advanced wireless services.

Disaggregation should be an available option.

**D. Expansion of the Permissible Service Definitions in Unserved Tribal Lands Must Not Adversely Impact Public Safety Communications or Cause Interference to CMRS Operations**

Given the particular challenges of providing basic telephony services to remote areas of some tribal lands, PCIA agrees with the FCC that expanding service definitions to permit commercial use of Private Land Mobile Radio (“PLMR”) spectrum is



warranted. However, PCIA cautions that any such expansion of the permissible service definitions be applied to operations serving only tribal lands. Also, the operator of the PLMR system must have an explicit obligation to ensure that its network does not adversely impact any public safety communications operations or that of any CMRS network that is operating within its allotted technical and territorial parameters. A private licensee who chooses to offer commercial service on tribal lands should also be subject to the same regulations that apply to other fixed or mobile carriers who offer commercial services.

**E. Transfer Restrictions For Designated Entities Should Be Lifted, But Only For Tribal Lands.**

PCIA agrees with the FCC that Designated Entities (DEs) should be able to transfer licenses or work with non-DEs to bring service to tribal lands. However, any liberalization of the DE transfer restrictions at this time should apply only to tribal lands. The non-DE should only be permitted to use the license for the purpose of serving a tribal land. If the license covers more than that geographic area, the DE should be allowed to partition the license to cover the tribal land.

**F. License Flexibility Measures Should Not Be Contingent on a Binding Agreement Between a Carrier and a Tribal Body.**

The FCC is correct in that, as a practical matter, a telecommunications service provider would not likely be able to provide service within tribal lands without the approval of tribal authorities. As the FCC has pointed out, tribal authorities have the right to control the placement of facilities on tribal lands. However, conditioning a service provider's ability to make use of license

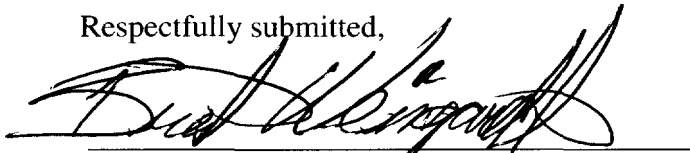
flexibility measures subject to a formal and binding agreement between a provider and the tribal authority is wholly unnecessary.

The FCC is responsible for regulating private and commercial uses of the radio spectrum. The FCC should not cede its authority to determine where and under what conditions FCC licensees operate their communication networks. Permitting local governmental authorities to determine who may offer wireless services and under what terms is wholly inconsistent with congressional direction to preempt this authority.<sup>4</sup> In addition, subjecting service providers intending to service high-cost areas to unnecessary or redundant documentation obligations will not help expedite service availability on tribal lands.

## II. CONCLUSION

PCIA agrees that the FCC should take measured steps to improve access to basic and advanced wireless telecommunications services for Native Americans living on tribal lands. However, the Commission should not extend the initiatives discussed in this NPRM to other unserved areas without first gaining experience with the technical and enforcement issues that may arise.

Respectfully submitted,



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<sup>4</sup> See 47 USC §332.